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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,393	12/10/2003	Mike Brown	03292.101840	1392
66569 7590 10/09/2007 FITZPATRICK CELLA (AMEX) 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			EXAMINER WHIPPLE, BRIAN P	
			ART UNIT 2152	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/707,393

Applicant(s)

BROWN, MIKE

Examiner

Brian P. Whipple

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/31/03 and 8/18/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-14 are pending in this application and presented for examination.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features of claims 1-14 must be shown or the features canceled from the claims. For example, tracking changes to components using said program (claim 1), updating tracking modifications (claim 2), components available to users on said network (claim 4), and the adding, dividing, etc. of a component (claim 5) are all features the examiner cannot locate in the drawings. This is not an exhaustive list and the applicant should ensure all limitations of all claims are represented in the drawings. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief

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description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 5 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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The addition, division, multiplication, recompilation, recoding, and removal of a component are not adequately described in the applicant's specification. The examiner could only locate [0023] of the specification as being related to the claims and [0023] fails to elaborate on the meaning of such actions on a component. Therefore, the claims cannot be said to be described well enough in the applicant's specification to show possession of the claimed invention.

5. Claims 5 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The addition, division, multiplication, recompilation, recoding, and removal of a component are not adequately described in the applicant's specification. The examiner could only locate [0023] of the specification as being related to the claims and [0023] fails to elaborate on the meaning of such actions on a component. Therefore, since the meaning of actions such as multiplying or dividing a component that may be hardware (see [0017] of the applicant's specification) are unclear, the claimed subject matter cannot be enabled due to the vague and indefinite description of the subject matter in the applicant's specification.

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6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. As to claims 1-7, 9-12, and 14, the use of “may” is vague and indefinite.

9. As to claims 2-3, 8, 10, and 12, the phrase “configured to be automatic and manual” is vague and indefinite. It is unclear how automatic and manual configuration can simultaneously occur.

10. As to claims 5 and 13, it is unclear how a component may be divided, multiplied, etc. especially in light of the component being either a software or hardware component as defined by the applicant’s specification (see [0017]). The meaning of multiplying a hardware component, for example, is unclear.

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11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-14 are rejected under 35 U.S.C. 102(a/e) as being anticipated by Chemali, U.S. Publication No. 2003/0055951 A1.

13. As to claim 1, Chemali discloses a method for:

accessing a program ([0053], ln. 6-9; the message logger 110 is a program);

said program enabling access to multiple subprograms ([0061]; the message logger 110 is a program comprised of various agents, the agents therefore being subprograms);

tracking changes to components using said program (Fig. 1; [0053], ln. 6-9; [0077], ln. 1-4; changes to software applications 120 are tracked by message logger 110);

modifying tracking information for components using said program ([0056, ln. 1-4; [0064, ln. 1-4; tracking information captured by the message logger 110 is continuously modified through the addition of new data, as the message logger 110 is monitoring the messaging data and adding it to the tracking information accordingly); and

updating tracking modifications made through said program onto a network (Fig. 1; [0053], ln. 9-11 and 14-19; [0056], ln. 1-4; [0064], ln. 10-12; [0080]; the message logger 110 transfers tracked information to a database 125 over a communication link 111; the continuously updated tracking information is tracking modifications as discussed for the previous limitation, and therefore updating database 125 with the tracking modifications captured by the message logger 110 over a communication link 111 is updating tracking modifications made through a program onto a network);

wherein said updating may be fully automated ([0077]; [0079]; updating clearly “may be fully automated” as multiple threads are running and monitoring computer instructions).

14. As to claim 2, Chemali discloses tracking changes, modifying tracking information, and updating tracking modifications may be configured to be automatic ([0077]; [0079]) and manual ([0057]; [0059]).

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15. As to claim 3, Chemali discloses use of said program to change said components ([0082]; instructions may be sent to a user or computer to shut down, amend, change or otherwise curtail certain hardware/software operations);

wherein said use of said program may be configured to be automatic ([0077]; [0079]; [0082]) and manual ([0057]; [0059]).

16. As to claim 4, Chemali discloses said components may be available to users on said network (Fig. 1; [0053], ln. 1-2; [0059]; [0066]; both the message data and the software applications themselves are accessible by users in the networked system 100).

17. As to claim 5, Chemali discloses said changes to said components may include: one of adding ([0077], ln. 1-4; "addition of a new software application"), dividing, multiplying, recompiling, recoding ([0077], ln. 1-4; "the modification of an existing software application") and removal of a component.

18. As to claim 6, the claim is rejected for the same reasons as claims 1-2 above.

19. As to claim 7, Chemali discloses generating information may include assigning metrics to said changes ([0059], ln. 10-15; "retrieve data from database 125, apply statistics to

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the data; [0071], ln. 1-7; “any messaging parameter or statistic [emphasis added]... when compared to the expected or historical data”).

20. As to claim 8, Chemali discloses said assignment of metrics is configured to be manual ([0059]; [0071], ln. 1-7; a user can access the data and apply statistics, and compare the data and statistics to expected or historical data; [0150], a user may define rules related to monitored data) and automated ([0144]).

21. As to claims 9 and 11, the claims are rejected for the same reasons as claim 1 above.

22. As to claim 10, the claim is rejected for the same reasons as claim 2 above.

23. As to claim 12, the claim is rejected for the same reasons as claims 1-2 above.

24. As to claim 13, the claim is rejected for the same reasons as claim 5 above.

25. As to claim 14, the claim is rejected for the same reasons as claim 6 above.

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26. Claims 1-7 and 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by

Reiner, U.S. Patent No. 6,219,676 B1.

27. As to claim 1, Reiner discloses a method for:

accessing a program (Col. 7, ln. 36-38);

said program enabling access to multiple subprograms (Col. 7, ln. 29-33);

tracking changes to components using said program (Col. 7, ln. 40-45);

modifying tracking information for components using said program (Col. 7, ln. 43-45;

“creates or updates [emphasis added] a log 112”); and

updating tracking modifications made through said program onto a network (Col. 9, ln. 8-26);

wherein said updating may be fully automated (Col. 9, ln. 43-48).

28. As to claim 2, Reiner discloses tracking changes, modifying tracking information, and

updating tracking modifications may be configured to be automatic (Col. 9, ln. 43-48;

“automatically maintain cache coherency”) and manual (Col. 7, ln. 29-33; a configuration

must be created defining areas that are to be monitored; Col. 9, ln. 43-48; “based on a

predetermined set of factors”).

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29. As to claim 3, the claim is rejected for the same reasons as claim 2 above.

30. As to claim 4, Reiner discloses said components may be available to users on said network (Abstract, ln. 1-3).

31. As to claim 5, Reiner discloses said changes to said components may include: one of adding, dividing, multiplying, recompiling, recoding and removal of a component (Col. 7, ln. 43-45; "added, changed, or deleted").

32. As to claim 6, the claim is rejected for the same reasons as claims 1-2 above.

33. As to claim 7, Reiner discloses generating information may include assigned metrics to said changes (Col. 7, ln. 45-57).

34. As to claims 9 and 11, the claims are rejected for the same reasons as claim 1 above.

35. As to claim 10, the claim is rejected for the same reasons as claim 2 above.

36. As to claim 12, the claim is rejected for the same reasons as claims 1-2 above.

37. As to claim 13, the claim is rejected for the same reasons as claim 5 above.

38. As to claim 14, the claim is rejected for the same reasons as claim 6 above.

39. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Vaver, U.S.

Publication No. 2003/0172152 A1.

40. As to claim 1, Vaver discloses a method for:

accessing a program ([0045], ln. 5-8; [0046], ln. 7-11; [0048]);

said program enabling access to multiple subprograms (Fig. 3; [0030] – [0031]; [0047]
– [0048]; subprograms such as memory elements for each module and tools within the
network management system 310 such as the reliability monitoring tool 318 monitoring a
multiple types of information);

tracking changes to components using said program ([0047]);

modifying tracking information for components using said program ([0046], ln. 3-7;
monitored status information and reliability statistics may be updated in real-time); and

updating tracking modifications made through said program onto a network ([0046], ln. 3-11; a user may access the information, as discussed for the previous limitation, and may do so across a network);

wherein said updating may be fully automated ([0041]).

41. As to claim 2, Vaver discloses tracking changes, modifying tracking information, and updating tracking modifications may be configured to be automatic and manual ([0041]; [0046], ln. 3-7).

42. As to claim 3, Vaver discloses use of said program to change said components ([0050]); wherein said use of said program may be configured to be automatic and manual ([0041]).

43. As to claim 4, Vaver discloses said components may be available to users on said network ([0037], ln. 7-9; [0039], ln. 1-7; [0045]).

44. As to claim 5, Vaver discloses said changes to said components may include: one of adding, dividing, multiplying, recompiling, recoding and removal ([0050]) of a component ([0047]).

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45. As to claim 6, the claim is rejected for the same reasons as claims 1-2 above.
46. As to claim 7, Vaver discloses generating information may include assigning metrics to said changes ([0029]).
47. As to claim 8, Vaver discloses said assignment of metrics is configured to be manual and automated ([0041]).
48. As to claims 9 and 11, the claims are rejected for the same reasons as claim 1 above.
49. As to claim 10, the claim is rejected for the same reasons as claim 2 above.
50. As to claim 12, the claim is rejected for the same reasons as claims 1-2 above.
51. As to claim 13, the claim is rejected for the same reasons as claim 5 above.
52. As to claim 14, the claim is rejected for the same reasons as claim 6 above.

Conclusion

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53. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the Notice of References Cited (PTO-892).

54. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Whipple whose telephone number is (571) 270-1244. The examiner can normally be reached on Mon-Fri (8:30 AM to 5:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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BPW

Brian P. Whipple

9/28/07

A handwritten signature in black ink, consisting of stylized, overlapping loops and curves.

BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER

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